

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,	:
	:
	:
- against -	:
	:
HECTOR RAYMOND PENA,	:
	:
Defendant.	:
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09-CR-0341 (VM)

ORDER

VICTOR MARRERO, United States District Judge.

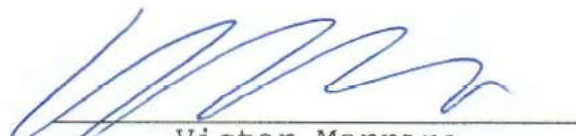
By letter dated May 18, 2020, defendant Hector Raymond Pena ("Hector Pena") requested confirmation regarding whether the Court would appoint counsel to assist him in challenging his conviction, at least in part, pursuant to United States v. Davis, 139 S.Ct. 2319 (2019). (See Dkt. No. 428.) In his letter, Pena noted that the Court appointed counsel for his brother Jose Pena, and that Jose Pena raises issues that appear substantially identical to those raised by Hector Pena. (See id.)

The Court has deferred ruling on Hector Pena's request for appointment of counsel until the completion of briefing on Jose Pena's apparently substantially identical Davis claims. The Court will review Hector Pena's application for counsel upon completion of briefing on Jose Pena's claims in order to determine whether the appointment of counsel for Hector Pena would still be warranted.

Counsel for Jose Pena has previously indicated to the Court that his ability to brief his client's claims is contingent on resolution of Jose Pena's pending appeal before the United States Court of Appeals for the Second Circuit. (See Pena v. United States, No. 20-144 (2d Cir. Jan. 13, 2020). The Second Circuit has temporarily stayed decision on Jose Pena's request for leave to file a motion based on Davis, noting that pending cases before the United States Supreme Court and the Second Circuit may affect its decision as to Jose Pena. (See id. at Dkt. No. 23.) Once the Second Circuit has resolved Jose Pena's appeal, this Court will order the expeditious completion of briefing on Jose Pena's motion and address Hector Pena's motion for appointment of counsel shortly thereafter. The Clerk of Court is hereby ordered to mail this Order to Hector Pena at Atwater United States Penitentiary, P.O. Box 019001, Atwater, CA 95301.

SO ORDERED.

Dated: New York, New York
02 June 2020


Victor Marrero
U.S.D.J.